



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

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December 18, 2017

**By ECF**

Honorable Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, New York 10007

Re: *Zappin v. Doyle*  
S.D.N.Y. No. 17 Civ. 8837 (KPF) (AJP)

Dear Judge Failla:

This Office represents the New York State Defendants in the above-referenced action.<sup>1</sup> We write in response to the Court's orders dated December 1 and 14, 2017, to provide updated information concerning service of process, and to propose a briefing schedule for State Defendants' anticipated motion to dismiss the action.

Plaintiff Anthony Zappin ("Plaintiff") has filed affidavits of service stating that his agents have effected service upon each of the State Defendants. In several instances, the purported service did not comply with applicable law. *See* Fed. R. Civ. P. 4(e); N.Y. Civil Practice Law & Rules § 308. While reserving the right to challenge the sufficiency of service of process, this Office has determined that at this time, the State Defendants are entitled to representation under N.Y. Public Officers Law § 17. Accordingly, I have filed a Notice of Appearance dated December 18, 2017 (ECF No. 52).

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<sup>1</sup> The named State Defendants are Kevin M. Doyle, a staff attorney of the Attorney Grievance Committee of the Appellate Division, First Department; Ernest Collazo, an Attorney Grievance Committee panel chairman; Justices Deborah A. Kaplan and Matthew F. Cooper of Supreme Court, New York County; Presiding Justice Rolando T. Acosta and Justice Peter H. Moulton of the Appellate Division, First Department; Chief Administrative Judge Lawrence K. Marks; the Justices of the Appellate Division, First Department; and Robert Tembeckjian, Administrator and Counsel of the New York State Commission on Judicial Conduct.

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As set forth more fully in my letter to Your Honor dated November 28, 2017, we plan to move to dismiss the action on several grounds, including the *Rooker-Feldman* and *Younger* abstention doctrines. Prior to filing the motion, we must review and analyze Plaintiff's 375-page Amended Complaint and the 91 annexed exhibits; the state court decisions that Plaintiff seeks to relitigate in this action; the legal arguments and authorities cited in Plaintiff's pleadings and his voluminous motions seeking interim relief; and the factual and legal grounds for dismissal of the action. We also must confer with the eight individually named State Defendants concerning their understanding of the pertinent facts, and to confirm the representation.

Based primarily on the nature and extent of these tasks, we propose the following schedule:

Feb. 16, 2018	State Defendants' Last Day to Move to Dismiss and to Oppose Plaintiff's Motion for a Preliminary Injunction
Mar. 16, 2018	Plaintiff's Last Day to Oppose State Defendants' Motion to Dismiss and Submit His Reply, If Any, In Support of His Motion for a Preliminary Injunction
Mar. 30, 2018	State Defendants' Last Day to File Their Reply, If Any, In Support of Their Motion to Dismiss

The proposed schedule would also accommodate several short-term litigation deadlines in other matters, as well as the holiday schedules of State Defendants and counsel.

Finally, we are in receipt of Plaintiff's letters dated December 15, 2017, seeking an expedited briefing schedule on his motion for a preliminary injunction and reconsideration of this Court's order dated December 14, 2017, which denied Plaintiff's request for leave to electronically file his motion for a temporary restraining order. State Defendants oppose both requests. We are prepared to respond more fully to Plaintiff's requests, should the Court deem it necessary and helpful to its determination.

We appreciate Your Honor's continued attention to this matter.

Respectfully submitted,



Michael A. Berg  
Assistant Attorney General

cc: Anthony Zappin, Esq.  
Patricia Bailey, Esq.